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C O N F I D E N T I A L SECTION 01 OF 03 KUWAIT 000057

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TAGS: [EINV](#) [EIND](#) [EPET](#) [ENRG](#) [PREL](#) [PGOV](#) [KU](#)  
SUBJECT: K-DOW AFTERMATH: LITIGATION LOOMS; HINTS OF HOPE  
FOR A REVIVED DEAL LINGER

REF: A. KUWAIT 34  
[1](#)B. KUWAIT 23  
[1](#)C. 08 KUWAIT 1259

Classified By: Economic Counselor Oliver John for reasons 1.4(b) and (d).

[1](#)1. (C) Summary: In the two weeks since the demise of the K-Dow joint venture between Dow Chemical and Kuwait's Petroleum Industries Company(PIC), the project remains a lead item in local news reports including those covering recent intense parliamentary debate on the issue. Although PIC officials have expressed their hope that the deal can still be salvaged in some form in the coming months, most of our interlocutors have categorically dismissed this possibility. PIC is also confident it is not liable for damages to Dow under the joint venture agreement. A bloc of Kuwaiti MPs is pushing for an inquiry into whether the government erred in canceling the \$17.4 billion deal. Dow, while publicly threatening legal action against PIC for breach of the joint venture agreement, privately has expressed interest in seeking a meeting with senior GoK leadership, including the newly named Acting Oil Minister Shaykh Dr. Mohammed Al-Sabah to explore the possibility of reviving the K-Dow project. End summary.

[1](#)2. (U) Following the GoK,s dramatic December 28 decision to withdraw authorization for the K-Dow joint venture in the face of strident criticism from a handful of members of Parliament(MPs), the K-Dow project reappeared on the front pages of the major daily newspapers on January 15. A group of MPs aligned with former Oil Minister Al-Olaim, who supported the K-Dow project, sought to investigate whether the government,s cancellation of the project was appropriate. A second MP grouping sought to investigate possible government malfeasance in how the project was first approved. The Speaker of the National Assembly tabled the two competing proposals with a directive to consolidate the proposals into a single request.

[1](#)3. (C) Press and parliamentary criticism of the GoK has continued since the 28 December GoK decision to cancel the deal, though the focus has shifted to the reasons for the existence of a \$2.5 billion penalty clause in the contract. In addition, critics have pointedly noted the contradictions inherent in the GoK,s quick reversal of the decision, asking rhetorically what had changed in less than a month to shift the deal from a good one to a bad one. Several of our interlocutors (with the notable exception of the Central Bank Governor) have acknowledged both the potential long-term benefits of the joint venture (in terms of allowing Kuwait to develop its hydrocarbon industry and &move up the value chain8) and the reputational costs of the way the GoK cancelled the deal. However, it is not clear that there is broad public support for the deal. According to many observers, the lack of a timely and effective Kuwait

Petroleum Company (KPC) or GoK public response to the criticism allowed the deal,s opponents to win the public relations battle. (Note: It is also important to understand the intensely personal nature of Kuwaiti politics. The daily newspaper Al-Watan has been one of the most vociferous critics of the K-Dow joint venture. Several of our interlocutors have explained that former Oil Minister Sheikh Ali Khalifa Al Sabah, who is a major shareholder in Al-Watan, bears a strong personal animus toward recently resigned Oil Minister Al-Olaim that dates to Al-Olaim,s criticism of Sheikh Khalifa for his role in an oil tanker scandal while Oil Minister. Ali Khalifa was ultimately exonerated of culpability in the oil tanker matter. End Note.)

14. (C) On January 12 the GoK formed a new cabinet with only two new names. Parliamentary reaction to this new cabinet was negative (ref A). Interestingly, the new cabinet featured an Acting Oil Minister, (the current, well respected Foreign Minister Shaykh Dr. Mohammed Al Sabah), reportedly because the GoK was unable to find anyone else willing to head a ministry likely to come under intense parliamentary and press scrutiny. Most observers see this as a caretaker appointment and suggest that the Minister is unlikely to aggressively pursue any projects, especially those that are politically fraught, such as K-Dow and the Fourth Oil Refinery.

15. (SBU) In the two weeks since the JV was halted, Ambassador and emboffs have expressed disappointment to senior GoK officials (Foreign Minister, Central Bank Governor, KIA Managing Director, MFA U/S, and Finance U/S) and members of the ruling family about the failure of the K-Dow deal and

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concern about potential long term negative consequences on foreign investment in the oil sector and other major projects in Kuwait.

16. (C) Kuwait Petroleum Corporation(KPC) MD and Legal Advisor Shaykh Nawaf Saud Nasser Al Sabah said the K-Dow JV was canceled because of GoK concerns that the anticipated extended global economic downturn made the K-Dow JV too risky. Nawaf said he suspected that the Central Bank Governor expressed his well-known view that the global economic crisis would be lengthy, and that this had a significant impact on the cabinet,s ultimate decision to remove government approval for the deal. Although the Governor was sphinx-like on the topic when pressed by Ambassador,(ref b) senior GoK officials since have confirmed to Ambassador that the Governor expressed his strong concern during the Cabinet meeting about the financial viability of the deal, given the current global economic crisis and the collapse of Dow's share price.

17. (C) Nawaf said that KPC and PIC management still believe that the K-Dow JV was and is a good opportunity for Kuwait and said that the companies would continue to try and change the GoK position and conclude the deal. He also noted that the terms of the agreement allowed the closing to be delayed.

(Note: This tracks with what PIC Chair Maha Hussain has told us and with PIC,s formal notification to Dow, which said that &PIC remains committed to the transaction and is currently considering what can be done to persuade the Government to reverse its decision.8 End Note.) Nawaf was unable, however, to identify a strategy that the K-companies could use to shepherd future major oil and gas projects through the now predictable parliamentary and media barrage of criticism to a successful conclusion. He stated his hope that Parliament would establish a committee dedicated to petroleum issues which would provide a forum for K-companies(all government-owned petroleum companies under the KPC umbrella) to present proposed projects to the National Assembly and respond to questions and concerns that any committee members might have. Nawaf said that, currently, the Finance Committee has jurisdiction over oil issues and that its members have not been receptive to offers

by K-Companies to make presentations on previous projects. He did not, however, mention any action that the GoK or KPC intended to take that might encourage such a development.

#### Recent Embassy Engagement Regarding the K-Dow JV

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18. (SBU) Post has continued its contact with Dow after the cancellation of the deal, although we have explained that Dow's January 6 announcement that it would seek to enforce its rights under the Joint Venture Formation Agreement<sup>8</sup> and the threat of legal action has made it difficult for us to advocate on behalf of Dow to avoid prejudicing the outcome of any law suit. While downplaying expectations, we have recommended that Dow, in the interest of enhancing prospects for future projects, engage in a controlled press campaign to explain to the Kuwaiti public why the deal would have benefited Kuwait. We have cautioned, however, that we did not believe that the deal was salvageable in its current form because the confluence of the global economic crisis, drastically lower oil prices, Kuwait's fractious parliament and the situation in Gaza made it politically difficult for the Amir or anyone else to force this deal past a suspicious National Assembly.

19. (C) On January 13 and 14, Dow Director of International Relations Lisa Schroeter told Ambassador and Econcouns of Dow's interest in seeking a meeting for Dow CEO Andrew Livornis with the Prime Minister or Foreign Minister/Acting Oil Minister to explore the possibility of reviving the JV. Schroeter said their sources had told them the new cabinet might have interest in exploring the possibility of reviving the JV. Embassy has provided contact information and notified the FM's office of this interest.

#### Comment

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10. (C) The K-Dow deal sank in the midst of a perfect political and economic storm, buffeted by a government that is unwilling to challenge a rambunctious National Assembly and a sharply deteriorating economic downturn. A successful revival of the deal, which we believe is highly unlikely, would first require PIC/Dow/KPC engagement with GoK senior

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leadership to persuade them of the viability of the project, and to clarify why it is in Kuwait's interest, in terms of economic value and long-term diversification of its economy. Gaining the GoK's approval would likely require Dow to sweeten the deal in order to provide cover for the government's second reversal on the project in a matter of a months. Following a GoK approval of the project, the PM would have to be willing to respond forcefully to the guaranteed opposition from a minority of MPs.

11. (C) Comment continued: To the best of our understanding, Parliament has no constitutional or statutory authority to block the project: its only tool is its ability to threaten to grill ministers, including the PM, in hopes of getting the Government to back down, as it did in December on the K-Dow deal. For this reason, a critical factor would be the PM's response to a second challenge of the K-Dow deal from the MPs. Should the PM be willing to challenge parliament, he would need to have PIC and his Acting Oil Minister (perhaps with some public presence by Dow as well) make a strong public case for the "new" deal and debunk the arguments of critical MPs. He would then need to respond to inevitable calls for his grilling to answer claims of malfeasance, misfeasance and/or corruption in approving the agreement. At this point the options would be to agree to the grilling and submit to a lengthy questioning by the Parliament (something no PM in Kuwait's history has ever done) or for the Amir to dissolve the parliament for the second time within a year, in

addition to two cabinet dissolutions.

¶12. (C) Comment continued: The question is how likely is the PM to be willing to provoke a parliamentary dissolution on behalf of the K-Dow project? Arrayed against the likelihood of this course of action is the PM's recent history of caving in to similar challenges by MPs, the very genuine concern about the effect of the global economic crisis on the viability of the project, and perhaps, most critically, the lack of any clear upside for the PM. The PM has rarely shown the willingness to take strong political stands during his tenure. There is little in the present scenario to suggest he is likely to do so now. End comment.

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